

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANE M. STRONG and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, CA

*Docket No. 00-2159; Submitted on the Record;
Issued February 22, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order¹ on July 18, 1996 in which it set aside the November 23, 1993 Office decision and remanded the case to the Office for further development. The Board determined that, in connection with her emotional condition claim, appellant had established an employment factor with respect to her workload.² The Board remanded the case to the Office for referral of appellant and the case record, including a new statement of accepted facts to an appropriate medical specialist for examination and an opinion regarding whether she sustained an emotional condition due to the accepted employment factor. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On remand, the Office referred appellant and a new statement of accepted facts, to Dr. Gary Hudak, a Board-certified psychiatrist, for an examination and an opinion regarding whether she sustained an emotional condition due to the accepted employment factor, her workload. By decision dated June 20, 1997, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she sustained an emotional condition due to the

¹ Docket No. 94-956.

² In April 1991 appellant, then a 36-year-old mail carrier, filed a claim alleging that she sustained an emotional condition due to various incidents and conditions at work, including harassment and discrimination committed by a supervisor, improper personnel actions and a heavy workload. The Board found that appellant had not established employment factors with respect to her claims of harassment, discrimination and improper personnel actions, but that she had established an employment factor with respect to her workload in that her mail delivery route was demanding and she was not provided enough time and support to complete her work duties.

accepted employment factor.³ By decision dated and finalized December 31, 1998, an Office hearing representative affirmed the Office's June 20, 1997 decision. By decision dated March 20, 2000, the Office denied appellant's request for merit review.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's March 20, 2000 decision denying appellant's request for a review on the merits of its December 31, 1998 decision. Because more than one year has elapsed between the issuance of the Office's December 31, 1998 decision and June 15, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the December 31, 1998 decision.⁴

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ the Office's regulations provide that a claimant must:

“(1) Show that [the Office] erroneously applied or interpreted a specific point of law;

“(2) Advances a relevant legal argument not previously considered by [the Office]; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”⁶

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁷ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁸

In support of her reconsideration request, appellant argued that she established an employment factor in that the employing establishment unfairly disciplined her because she was

³ The Office determined that the opinion of Dr. Hudak showed that appellant's emotional condition was due to nonwork factors.

⁴ See 20 C.F.R. § 10.501.3(d)(2).

⁵ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.” 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. §§ 10.606(b)(2).

⁷ 20 C.F.R. § 10.607(a).

⁸ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

given too much mail to deliver in the allotted time. However, appellant has already presented such an argument to the Office and the Office has considered and rejected it.⁹ The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁰ In support of this argument, appellant submitted a copy of a December 31, 1990 disciplinary letter. However, this letter is not relevant to appellant's argument in that the letter disciplined appellant for not following instructions regarding use of overtime and for improperly delivering mail. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹ Appellant further argued that the opinion of Dr. Hudak, the Board-certified psychiatrist who served as an office referral physician, did not support a finding that her emotional condition was related to nonwork factors. However, appellant has already advanced this argument and the Office has evaluated and considered the weight of the opinion of Dr. Hudak.

In the present case, appellant has not established that the Office abused its discretion in its March 20, 2000 decision by denying her request for a review on the merits of its December 31, 1998 decision under section 8128(a) of the Act, because she did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

⁹ The Office has accepted that appellant's mail delivery route was demanding and she was not provided enough time and support to complete her work duties. It has not been accepted that appellant was disciplined for the existence of this factual circumstance.

¹⁰ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹¹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The Office of Workers' Compensation Programs decision dated March 20, 2000 is affirmed.

Dated, Washington, DC
February 22, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member